

TRANSLATED VERSION

As of November 21, 2012

Readers should be aware that only the original Thai text has legal force and that this English translation is strictly for reference.

Notification of the Office of the Securities and Exchange Commission

No. SorChor. 29/2555

**Re: Rules, Conditions and Procedures for the Approval of
REIT Manager and Standard Conduct**

With regard to the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Unit of a Real Estate Investment Trust* stipulating that the REIT manager entrusted by the Trustee to manage the Real Estate Investment Trust [REIT] as specified in trust instrument shall be a person approved by the Office of the Securities and Exchange Commission. For the purpose of appointment of REIT manager, the Office of the Securities and Exchange Commission has issued a set of requirement for the approval of the REIT manager as follow:

Clause 1 This Notification shall come into force as from 1 January 2013.

Clause 2 In this Notification:

“**REIT**” means a real estate investment trust pursuant to the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of a Real Estate Investment Trust*.

“**unit**” means a trust certificate representing the rights of the holder as a beneficiary of a REIT.

“**manager**” means a person appointed by the board of director of the company who is responsible for the highest authority to manage the company, by whatever name called.

“**major shareholder**” means a person who holds directly or indirectly more than 10% of the total number of voting shares of any juristic person.

“**executive**” means a **manager**, the first four executives below the **manager**, and every person with a position equivalent to the fourth of such executive.

“**associated person**” means persons with one or more of the following relationships:

- (1) spouse and the child who has not yet become *sui juris*;
- (2) relationship between a juristic person and a shareholder or partner of such juristic person which holds directly or indirectly more than 50% of issued shares of, or more than 50% of partnership interest in, such juristic person;
- (3) private fund of person in sub clause (1) or (2) above, but not including any provident fund.

“**conflict person**” means the following persons:

- (1) **REIT manager**;
- (2) director, **executive**, **authorized management person**, or personnel of the **REIT manager**;
- (3) major shareholder of the **REIT manager**;
- (4) juristic person in which the major shareholder is also **the major shareholder** of the **REIT manager**.

“**authorized management person**” means deputy manager, assistant manager, head of department, [and] branch manager, including a person occupies in a position being similar to those positions, by whatever name called, who is responsible for REIT management.

Clause 3 This Notification shall comply with the following matters:

- (1) the approval of the *REIT manager* shall be subject to the provisions under Chapter 1;
- (2) the duties of the *REIT manager* shall be subject to the provisions under Chapter 2;
- (3) the cessation of the approval of the *REIT manager* and other enforcement shall be subject to the provisions under Chapter 3;
- (4) the consideration framework of the SEC Office on factors for issuing [administrative] order to the *REIT manager* shall be subject to the provisions under Chapter 4.

Chapter 1

Granting an Approval for Being REIT Manager

Division 1

Applying for obtaining an approval

Clause 4 The following companies can apply for obtaining an approval of being a *REIT manager* [from the SEC Office]:

- (1) a mutual fund management company [according to the *Securities and Exchange Act B.E. 2535 (1992)*] having been operating such business; or
- (2) a company incorporated under Thai law besides the company stated in sub clause (1).

Clause 5 The company as mentioned in Clause 4, shall submit the application form attached to this Notification to the SEC Office together with the relevant evidentiary documentation demonstrating that it has qualifications as stipulated in Division 2 of this Chapter. In case of the company stated in Clause 4(2), the following evidentiary documentation shall be submitted as well:

- (1) a copy of the memorandum of association certified by the Ministry of Commerce;
- (2) a copy of the certificate of registration issued by the Ministry of Commerce;
- (3) a copy of the article of association certified by the Ministry of Commerce;
- (4) the audited annual financial statement (if any) for the latest fiscal year or [in case of the new established company] the reviewed interim financial statement up to the latest quarter. The auditor having audited or reviewed such financial statements shall be an auditor granted approval from the SEC Office.

Clause 6 In case the submission of application is applied for a renewal approval, the applicant shall use the application form attached to this Notification together with the relevant evidentiary documentation demonstrating that it has the qualifications as stipulated in Division 2 of this Chapter. Such application shall be submitted to the SEC Office at least 30 days prior to the expiration of currently available approval period.

Clause 7 The applicant shall pay the fee for submitting an application, as prescribed in the *Notification of the Office of the Securities and Exchange Commission concerning Fees for Filing Registration Statement, Permission by Registration and All Applications for Obtaining Approval*.

Clause 8 In consideration of the application, the SEC Office may require the applicant to clarify, act or submit additional evidentiary documentation within the period specified by the SEC Office.

In case the applicant does not comply with such requirement, it will be deemed that the applicant does not intend to apply for obtaining approval any further.

Clause 9 The SEC Office will notify the result of the deliberation of the application within 45 days from the date which the SEC Office received the application and a complete set of evidentiary documentation.

Clause 10 In case the application submitted for a renewal approval, if the SEC Office has not notified the result of deliberation within the currently available approval period, the **REIT manager** who has submitted the application can further operate as **REIT manager** until the SEC Office notify the result of the deliberation.

Division 2

The rules on granting approval and approval period

Clause 11 An applicant who will obtain approval to be **REIT manager** shall demonstrate that it has ability to manage the **REIT**, being assigned by REIT trustee, efficiently and provide measure for taking into account the best interest of **unit** holders. In addition, the applicant shall comply at least with the following criteria:

- (1) no reasonable doubt of the applicant's financial position which may cause damage, financial insufficiency and defective or improper business operation;
- (2) the applicant's shareholding structure clearly reflects the power of controlling shareholders and their interests;
- (3) the applicant has or will have an operating system which is fit and proper for operating as a **REIT manager** and at least provide the systems as stipulated in Clause 21;
- (4) the applicant has or will have availability of personnel for the function of **REIT manager**, which shall be at least one supervisor being responsible for management of **REIT**'s properties and at least 2 staffs who have knowledge and experiences in management of real estate investment at least 3 years within a 5-year period before the date of submitting the application;
- (5) no facts causing any reasonable doubt that the applicant will be unable to perform **REIT manager**'s function under Chapter 2 efficiently and reliably, if the applicant obtain an approval to be a **REIT manager**.

Clause 12 In case an applicant is a company as specified in Clause 4(2), the following rules shall be additionally complied by the applicant:

(1) the applicant shall have paid up capital of at least 10 million baht;
 (2) the core business of the applicant is a **REIT manager**. In case there are other businesses, those businesses [i] shall be related to the **REIT manager**, [ii] shall not have conflicts of interest [with the assigned **REIT**] which causes the applicant is undue responsibility as **REIT manager**, and [iii] shall not make applicant's financial safety insecure, unless the applicant can provide systems to prevent the conflicts of interest and control risks sufficiently and effectively;

(3) one third of the applicant's board of directors shall be independent directors which conform to the *Notification of the Capital Market Supervisory Board concerning the Application for and an Approval of the Offer for Sale of Newly Issued Shares, mutatis mutandis*;

(4) the applicant's directors, manager and **authorized management persons** shall not have prohibited characteristics as specified in the *Notification of the Capital Market Supervisory Board concerning the Prohibited Characteristics of Personnel in Capital Market Industry, mutatis mutandis*;

(5) the applicant's **major shareholder** shall not have prohibited characteristics as specified in notifications, rules, or orders¹ issued by the *Securities and Exchange Act of B.E. 2535(1992)* in the part of prohibited characteristics of a securities company's **major shareholders**, *mutatis mutandis*.

Clause 13 An approval of a qualified **REIT Manager** is for a 5-year period.

Chapter 2

Duties of the REIT Manager

Clause 14 For the purpose of determining this chapter:

"real estate" means the real estate which the **REIT** had acquired or will acquire the ownership or the possessory right according to the rules in the *Notification of the Capital Market Supervisory Board concerning the Issuance and Offer for Sale regarding Units of a Real Estate Investment Trust*.

Clause 15 The **REIT manager** shall perform its duties as stipulated in this chapter.

Clause 16 For the purpose of compliance with this Notification, the SEC Office may require the **REIT manager** to explain, deliver evidentiary documentation, act, or omit to act as stated in the requirement.

Clause 17 The **REIT manager** shall maintain its qualifications in accordance with the rules as prescribed under Chapter 1.

¹ This provision hereby refers to the *Notification of Securities and Exchange Commission No. Kor.Thor. 33/2545 Re: Rules, Conditions and Procedures for granting approval and approving on changing in shareholding structure in Securities Company Dated April 4th, 2002*.

Clause 18 The *REIT manager* shall provide indemnity insurance for the performing its function, as well as the conduct of its directors, *executives* and personnel, during the period of approval to be *REIT manager*.

Clause 19 The *REIT manager* shall not hold *units* of its managed *REIT* more than the following rate:

- (1) 50% of the *unit* sold; and
- (2) 50% of the *unit* sold of each class, in case there are many classes of

units.

Units which are held by *associated person* of the *REIT manager* shall be included in the calculation under the first paragraph.

Clause 20 In case the *REIT manager* holds *units*, the *REIT manager* shall exercise its right to vote by taking into account the best interest of the *unit* holders as a whole when there is a requirement to have resolution from *unit* holders.

Clause 21 In order to properly and efficiently manage the *REIT* entrusted by the Trustee, the *REIT manager* shall provide qualitative and capable operating systems to support the work under its responsibility entirely. In this regard, the systems shall comprise of at least the following systems:

(1) a system for governing, supervision, and risk management of the *REIT*'s investment, which support *REIT manager* to conform to the trust instrument and to protect the interest of the *REIT* and *unit* holders as a whole;

(2) a system to prevent the conflict of interest between the *REIT* under management and *conflict person*, including structuring its organization [to prevent such conflict]. Additionally, the process to handle for keeping the best interest of the *REIT* or the *unit* holders, as a whole, when a conflict of interest has been happened, is required;

(3) a system to monitor its personnel, getting involved in the operation of the *REIT*, [i] to have appropriate qualifications in accordance with the nature of the work allocated to them and [ii] to carry out the work in compliance with the *Securities and Exchange Act of B.E. 2535(1992)*, the *Trust for Transactions in the Capital Market Act of B.E. 2550(2007)*, and notifications, rules or directives issued under such laws, including other relevant laws concerning the operation of a *REIT*;

(4) a system to support the disclosure of information about the *REIT* as stipulated in trust instrument and the rules issued under the *Securities and Exchange Act of B.E. 2535(1992)*;

(5) a back office system;

(6) an internal control system and a system for handling of complaints and dispute resolution.

A back office system in sub clause (5) of the first paragraph may be outsourced.

Clause 22 In the business operation, the **REIT manager** shall conform to the principle of business conduct as follows:

(1) exercises its duties with knowledge and skills that may reasonably expected as a professional, and with diligence, care, and loyalty. In this regard, the **REIT manager** shall respond to the **unit** holders fairly and exercise its power for the best interest of the **unit** holders as a whole. Additionally, the **REIT manager** shall comply with the laws, trust instrument, the objective for establishing the **REIT**, and the resolution of the **unit** holders;

(2) has continuously sufficient capital to operate the business and to compensate for any detriment which may occur from performing the duties of a **REIT manager**;

(3) discloses, gives opinion on, or provides important information which is reasonably relevant to making decision by investors for investment. In this regard, such information shall be clearly and not be distortion or misleading;

(4) do not exploit any information acknowledged from performing as **REIT manager** for its own interest, or in manner of damage or impact to the interests of the **REIT**;

(5) perform its duty carefully in order to avoid conflicts of interests. In case of inevitableness, the **REIT manager** shall ensure that the **unit** holders' interest [and the **REIT**'s interest] will be treated fairly and appropriately;

(6) comply with [i] the *Securities and Exchange Act of B.E. 2535(1992)*, [ii] the *Trust for Transactions in the Capital Market of B.E. 2550(2007)*, [iii] other laws relevant to the operation of a **REIT**, and [iv] the code of ethics and standards of professional conduct as defined by the associations related to securities business or by organizations in connection with securities business recognized by the SEC Office, *mutatis mutandis*. In addition, the **REIT manager** shall not conspire, employ or collaborate anyone to violate the laws and regulations;

(7) cooperate with the REIT trustee or the SEC Office in performing their duties, and disclose information which may affect the management of the **REIT** significantly or other information which should be notified to them.

Clause 23 In executing a transaction concerning a **real estate** for the **REIT**, the **REIT manager** shall perform the transaction in accordance with the following rules:

(1) ensure that the dispose agreement of the **real estate** or other agreements concerning **real estate** is prepared correctly and legally binding;

(2) ensure that the investment in the **real estate** for the **REIT** will be made properly by complying with, at least, the following processes:

(a) assessment of preparedness to manage the **real estate** investment before accepting to be the **REIT manager** or before more investing in new **real estate** for the **REIT**, as the case may be;

(b) analysis of the feasibility study, and making due diligence of the **real estate**, including the assessment of various risks that may occur from the investment in such **real estate** together with arranging guidelines to manage the risks. In this regard, such risks include completion risks (if any).

Clause 24 The **REIT manager** shall arrange **unit** holders' meeting in accordance with the trust instrument.

Clause 25 When there is a change of the *REIT manager*, the former *REIT manager* shall take any action as necessity in order that the new *REIT manager* would be able to perform its duty successfully.

Clause 26 In case an adviser is appointed to provide consultation or make recommendation relating to the investment in and management of a *real estate*, the *REIT manager* shall comply with the following rules:

(1) request the adviser to report on conflict of interest on the issue under deliberation;

(2) not allow the adviser, who has interest directly or indirectly in the deliberated issue, to participate in considering such issue.

Clause 27 The *REIT manager* shall prepare its financial statement in accordance with financial reporting standards as stipulated by the law on accounting profession² and submit such financial statement to the SEC Office within 3 months from the end of its fiscal year.

The financial statement prepared according to the first paragraph shall be audited by an auditor who has obtained an approval from the SEC Office.

Chapter 3

The Cessation of Approval for Being REIT Manager and Compulsory Provisions

Clause 28 The approval of the *REIT manager* will cease when:

(1) the *REIT manager* informs the SEC Office in writing for stopping being as a *REIT manager* and the SEC Office permits thereof;

(2) the SEC Office revokes the approval or orders a suspension of operation for the remaining period of the approval;

(3) the validity of the approval is expired, and the *REIT manager* does not apply for renewal.

Clause 29 In case the *REIT manager* is unable to carry on its duties according to the rules as prescribed in chapter 2, the *REIT manager* shall notify the SEC Office in writing such situation, the causes, and solutions within 15 days from the day of being aware or should be aware thereof.

Clause 30 In case the fact appeared that the *REIT manager* is unable to maintain qualification as prescribed in chapter 1, or violates or does not comply with the rules as prescribed in chapter 2, the SEC Office may order the *REIT manager* to make correction within the specified period of time, or may govern thereof in accordance with Clause 31.

² The law on accounting professions means *The Accounting Professions Act B.E. 2547 (2004)*

Clause 31 In case the fact appeared that the **REIT manager** is unable to maintain qualification as prescribed in chapter 1, or violates or does not comply with the rules as prescribed in chapter 2, or do not follow the order of the SEC Office which is issued under Clause 30, or follow the order, but is unable to make the correction within the time specified by the order under Clause 30, the SEC Office may issue order for one or several kinds of the following measures:

- (1) restriction on the **REIT manager**'s business operation;
- (2) suspension of the approval to be **REIT manager** for a period of time or in accordance with certain conditions;
- (3) revocation of the approval for being **REIT manager**;
- (4) stipulating a period of time or conditions for submitting application for being **REIT manager** next time. The period of time will stipulate not more than 10 years for each case. In this regard, the SEC Office may amend or change the period of time or conditions already stipulated, should it appears that such person has deportment as specified above again.

Chapter 4 **Factors Used for the Consideration of** **Order by the SEC Office**

Clause 32 The SEC Office will use the following factors for the consideration in issuing an order in accordance with Clause 31:

- (1) demeanors of the **REIT manager** in managing the **REIT**;
- (2) effects or damages to the investors caused by the conduct of the **REIT manager**;
- (3) the correction or other measures which are beneficial to the investors to amend, remedy or prevent the re-occurrence of the same demeanors;
- (4) other demeanors of the **REIT manager** which is useful for or hinder to the operation of the SEC Office;
- (5) historical record of improper demeanor in the past of the **REIT manager**.

In considering the facts according to the first paragraph, the SEC Office will take into account the demeanors of or effects that arise from the act of the personnel of the **REIT manager** and their realization to do such things, for example doing mal-function with deliberation or gross negligence.

Notified this 21st day of November 2012.

- signature-
(Vorapol Socratianurak)
Secretary-General
Office of the Securities and Exchange Commission

Note: please note that the contents added in brackets [...] have only been provided in the English version for clearer understanding.